IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.2305 OF 2005

Namdev Pandurang Pandhare : Petitioner

(Orig.Deft. No.1)

V/s.

Narayan Wasant Kulkarni & Anr. : Respondents

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Mr.S.S.Patwardhan for the petitioner.

Mr.S.N.Chandrachood for the respondent no.1.

...

CORAM : S.A. BOBDE, J.

July 6, 2005.

P.C.:

1. Rule, returnable forthwith.

Mr.Chandrachood for the respondent no.1 waives service of rule.

Heard by consent.

2. The learned trial Judge has declined to consider the issue of limitation by the order below exh.85. That is challegned by the defendant no.1 in this petition.

3. The reason why the learned trial Court has declined to go into the question of limitation is that the petitioner

(defendant no.1) had not filed written statement at that stage. This cannot absolve the Court from the duty cast on it under section 3 of the Limitation Act.

4. In the circumstances, the impugned order is set aside. The trial Court is directed to consider the issue of limitation, in accordance with law.

5. The rule is made absolute in the aforesaid terms.

S.A. BOBDE, J.